In the High Court of Judicature at Madras

Dated: 9.1.2007

Coram:

The Honourable Mr.Justice M.E.N.PATRUDU

Writ Petition No.35216 of 2004

Mohammed Abdul Malik ... Petitioner

Vs

1. The Presiding Officer,
   IInd Additional Labour Court,
   Chennai.

2. T.Karunakaran. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the entire records culminating in the passing of the Award dated 28.9.2004, passed by the first Respondent herein, made in C.P.No.205 of 1998, quash the same.

For Petitioners .. Mr.Gupta
For Respondents .. Mr.R.Lawrence for R2.

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O R D E R

The petitioner is questioning the Award of the first Respondent the Presiding Officer of the II Additional Labour Court, Chennai in C.P.No.205 of 1998.

2. Briefly the facts are:- The petitioner is having a shop and he is doing business in garments. The second Respondent hereinafter referred to as workman worked as Part-Time employee as Quality Control Inspector. According to the petitioner, the workman stopped offering his services with effect from 31.8.1997 and left the services of the petitioner. But thereafter, he issued a legal notice on 12.1.1998 claiming Rs.12,000/- as salary payable to him from September to December 1997 at the rate of Rs.3,000/- per month and after issuance of the legal notice he filed a petition under Section 33(c)(2) of the Industrial Disputes Act claiming the following:-

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		Rs.	Ps.
(a)	Wages unpaid for the period from 1.9.97 to 31.12.97 for 4 months at Rs.3,000/- consolidated amounting to ..	12,000.00	
(b)	Overtime wages for the period from 1.4.92 to 31.8.97 for 65 months at Rs.3,000/- consolidated per month, at 4 hours extra overtime was done, amount to ..	1,95,000.00	
(c)	Provident fund for the period from 1.4.92 to 31.8.97 for 65 months at Rs.3000/- at 10% of wages of employees' contribution amounting to ..	19,500.00	
(d)	Provident fund for the period from 1.4.92 to 31.8.97 for 65 months at Rs.3,000/- at 10% of wages of employees' contribution amounting to ..	19,500.00	
(e)	Leave wages unpaid for the period from 1.4.92 to 31.8.97 for 65 months for 195 days at Rs.100/- per day or Rs.3,000/- p.m amounting to ..	19,500.00	
(f)	Bonus for the year 1996-97 for one year at Rs.3,000/- at 8.33% amounting to ..	3,000.00	
	Grand Total ..	2,68,000.00	

3. The Labour Court has numbered the dispute as C.P.No.205 of 1998 and claim statement and counter statements were filed and the petitioner disputed about the amounts and after enquiry, the Labour Court, by the impugned Award directed the petitioner to pay Rs.2,13,000.00 under the head of unpaid salary for the period from 1.9.97 to 31.12.97 and overtime wages for 60 months at the rate of Rs.3,000/- per month and Leave Salary for a period from 1.4.92 to 31.12.97 and bonus for the year 1996-97.

4. The contention of the petitioner is that there is no evidence before the Labour Court to award the above amount and not even a single document was produced on behalf of the workman to substantiate his claim. Therefore, the award is liable to be set aside. The forcible contention of the learned counsel for the petitioner is that there is no evidence on behalf of the workman. It is also contented that the Court below has awarded the amount of compensation on stray admissions of the witnesses on

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behalf of the petitioner his Manager. It is also stated that the Labour Court has directed the petitioner to produce certain documents and as the petitioner is not having those documents the same fact has been conveyed. But yet the Labour Court drawn an adverse inference against the petitioner and passed the award.

5. A counter affidavit is filed by the workman. The contention of the workman, the second respondent is that he entered into service of the petitioner/employer on 2.3.1992 as Garment Inspector and worked till 31.12.1997 and the petitioner refused to employ the workmen from 31.12.1997 and he was not paid his earned wages for the period from 1.9.1997 to 31.12.1997 for four months at the rate of Rs.3,000/- per month amounting to Rs.12,000/- and the workman was also not paid overtime wages for the period from 1.4.92 to 31.8.97 for 65 months at the rate of Rs.3,000/- per month and he was not paid his P.F contributions for the period from 1.4.1992 to 31.8.1997 and he was not paid his earned leave wages for 65 months for 195 days and he was not paid bonus for the year 1996-97 at the rate of Rs.3,000/- and therefore, the total amount payable by the petitioner to the workman is Rs.2,68,500/- and the same is claimed and the Labour Court has awarded the amounts as per the evidence on record and the award is legal.

6. ARGUMENTS:-

Heard the arguments of both sides.

7. POINT:-

The point for determination is:
"Whether the Award of the Labour Court is justified."

8. THE POINT:-

Perused the Award of the Labour Court. The workman examined himself as WW1 and the Manager of the petitioner is examined as MW1. On behalf of the workman four documents have been marked and they are, Ex.P1 is the legal notice sent by the workman and Ex.P2 is the copy of the letter written by the workman to the petitioner. Ex.P3 is the postal acknowledgement and Ex.P4 is the complaint given by the workman to the Assistant Commissioner of Police. On behalf of the Management only one document is marked which is Ex.R1 copy of the notice sent to the workman.

9. Thus, it is clear that except oral evidence of the workman and the legal notice and a letter of workman there is no other document on behalf of the workman either to prove that he was appointed by the petitioner as his employee on payment of salary of Rs.3,000/- per month. So also, there is no document on behalf of the workman to show that the workman has worked overtime and he is entitled for particular amount either in a month or lumpsum. There is not even single document to show the number of hours the workman worked and the period the workman was actually worked.

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Similarly there is no document to prove either P.F. contributions by the workman and earned leave salary etc.

10. In this case another vital point to be noted is that the workman has issued Ex.P1 the legal notice and he as confined his claim to Rs.12,0000/- i.e. salary for four months at the rate of Rs.3,000/- per month. The workman did not claim either overtime or the leave salary or the P.F. contributions or Bonus etc. in this earliest document. Having not claimed any of those amounts at the earlier stage the workman has put up a plea of claim for the first time before the Labour Court and the Court below erroneously accepted the said claim without any document and in the absence of trustworthy evidence. Except oral statement of P.W.1, there is no other evidence before the Court below. However, there is stray admission of RW1 who is no other than co-employee of workman.

11. In the instant case the employment of workman with the petitioner was established and the petitioner has stated that the workman stopped offering his services. Since it is admitted on behalf of the petitioner in writing, the "contract of employment" is established between the workman and the petitioner.

12. However, the petitioner did not admit in writing that the workman has worked for overtime. There is a specific denial.

13. In fact before the Labour Court the averments of the counter are mentioned in para 3. As per the counter of the petitioner before the Labour Court only two employees are engaged in his business and the workman is only on a Part-Time basis and he was paid wages on piece rate basis for the work done by him. Except this admission, there is no other admission on behalf of the petitioner through his counter.

14. But, the Labour Court has awarded overtime wages, leave salary as if the workman is a regular employee. More so, in the absence of any appointment order or salary slip disclosing the monthly salary.

15. Thus, there is no evidence before the Labour Court to hold that the workman is a regular employee of the petitioner or he worked continuously as permanent employee and he used to draw the salary of Rs.3,000/- per month and he has worked overtime and that the workman did not receive overtime wages. When the petitioner has taken a specific plea that the workman is not a regular employee and he has not received any salary and he used to receive only wages on the piece rate basis and he has not worked for overtime and there is no P.F contribution as P.F. Act is not applicable in his establishment, and the Pension Act is also not applicable as there are only two employees working with him and the workman was not his employee the Court below should have considered these facts. While discussing the point the Labour Court stated that the workman worked as a Garment Checker with the petitioner, there is no appointment order to come to that conclusion. Even the evidence of R.W.1 discloses that the workman worked as a Part-Time Quality Control Inspector

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on a piece rate employee. The Labour Court passed an Award against the petitioner stating that the Proprietor has not produced any document to prove that the workman has not worked as regular employee with him and he worked as Part-Time piece rate employee and on that basis an adverse inference is drawn. This is hopelessly bad conclusion of the Labour Court.

16. In Surendranagar District Panchayat v. G.Laljibhai (2006(4)L.L.N 186) the Supreme Court held as follows:-

"8. In Municipal Corporation Faridabad v. Siri Niwas [2004(4) L.L.N. 785], it was held that the burden was on the workman to show that he was working for more than 240 days in the preceding one year prior to his alleged retrenchment. In Madhya Pradesh Electricity Board v. Hariram [2004 (4) L.L.N.839], the position was again reiterated as follows, in para 11, at page 842:

"The above burden having not been discharged and the Labour Court having held so, in our opinion, the Industrial Court and the High Court erred in basing an order of reinstatement solely on an adverse inference drawn erroneously. At this stage it may be useful to refer to a judgment of this Court in the case of Municipal Corporation Faridabad v. Siri Niwas [2004(4)L.L.N. 785] (vide supra), wherein this Court disagreed with the High Court's view of drawing an adverse inference in regard to the non-production of certain relevant documents. This is what this Court had to say in that regard, in Para.15, at page 788:

'A Court of law even in a case where provisions of the Indian Evidence Act apply, may presume or may not presume that if a party despite possession of the best evidence had not produced the same, it would have gone against his contentions. The matter, however, would be different where despite direction by a Court the evidence is withheld. Presumption as to adverse inference for non-production of evidence is always optional and one of the factors which is required to be taken into consideration is the background of facts involved in the lis. The presumption, thus, is not obligatory because notwithstanding the intentional non-production, other circumstances may exist upon which such intentional non-production may be found to be justifiable on some reasonable grounds. In the instant case, the Industrial Tribunal did not draw any adverse inference against the appellant. It was within its jurisdiction to do so particularly having regard to the nature of the evidence adduced by the respondent.'

10. In a recent judgment in //R.M.Yellatti v. The Asst.Executive Engineer// [2006 (1) L.L.N.7], the decisions referred to above were noted and it was held as follows:

"Analyzing the above decisions of this Court, it is clear that the provisions of the Evidence Act in terms do not apply to the proceedings under S.10 of the Industrial Disputes Act. However, applying general principles and on reading the aforestated

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judgments, we find that this Court has repeatedly taken the view that the burden of proof is on the claimant to show that he had worked for 240 days in a given year. This burden is discharged upon the workman adducing cogent evidence, both oral and documentary. In cases of termination of services of daily waged earner, there will be no letter of appointment or termination. There will also be no receipt or proof of payment. Thus in most cases, the workman (claimant) can only call upon the employer to produce before the Court the nominal muster roll for the given period, the letter of appointment or termination, if any, the wage register, the attendance register etc. Drawing of adverse inference ultimately would depend thereafter on facts of each case. The above decisions however make it clear that mere affidavits or self-serving statements made by the claimant/workman will not suffice in the matter of discharge of the burden p[laced by law on the workman to prove that he had worked for 240 days in a given year. The above judgments further lay down that mere non-production of muster-rolls per se without any plea for suppression by the claimant workman will be the ground for the Tribunal to draw an adverse inference against the management. Lastly, the above judgments lay down the basic principle, namely, that the High Court under Art. 226 of the Constitution will not interfere with the concurrent findings of fact recorded by the labour Court unless they are perverse. This exercise will depend upon facts of each case."

11. The above position was again reiterated in a recent judgment in Chairman Oill and Nataural Gas Corporation, Ltd., and another v. Shyamal Chandra Bhowmik [2006(1) L.L.N.91]

12. It was held in all these cases that the burden of proof lies on the workman to show that he had worked continuously for 240 days for the preceding one year and it is for the workman to adduce evidence apart from examining himself to prove the factum of being in employment."

17. Thus, the apex Court has clarified through several pronouncements that the burden lies always on the workman to prove that he has worked as employee and he has drawn particular salary as regular employee and he was discharged from service or dismissed from service and he is entitled for relief sought for. In the instant case there is no evidence in this respect. There is no evidence that documents are suppressed. Hence drawing adverse inference is bad in law.

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18. For the foregoing reasons, this Court comes to a conclusion that there is no evidence on behalf of the workman to prove his claim and the Labour Court has erroneously awarded the amount therefore, the Award of the Labour Court is liable to be set aside and accordingly the writ petition is allowed. No costs.

gr.

Sd/-
Assistant Registrar

/true copy/

Sub Assistant Registrar.

To
The Presiding Officer, IInd Additional Labour Court,Chennai.
+ One cc to m/s Gupta & Ravi Advocate SR 1744
+ One cc to M/s R/ Lawrence Advocate SR 1895

AVM (co)
sg 19/01/07

ORDER
IN W.P.No.35216 of 2004
09.01.2007

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